IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 4TH JANUARY 2007 / 14TH PAUSHA 1928

MFA.No. 1132 of 1998(C)

WCC.115/1995 OF THE COURT OF THE COMMISSIONER FOR WORKMEN'S COMPENSATION, KOZHIKODE.

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APPELLANT/2ND OPPOSITE PARTY:

THE ORIENTAL INSURANCE CO. LTD.,
BADAGARA , NOW REPRESENTED BY ITS
ADMINISTRATIVE OFFICER,
MOTOR THIRD PARTY CLAIMS CELL, M.G. ROAD,
KOCHI – 35.

BY ADV. SRI.MATHEWS JACOB (SR.)

RESPONDENT/APPLICANT:

K.N. UMMERKUTTY, S/O. MOIDEEN,
PAZYAPURA VALAPPIL HOUSE,
BADAGARA BEACH, P.O. BADAGARA-3,
PIN – 673 103.

BY ADV. SRI.K. RAKESH ROSHAN
ADV. SMT.THUSHARA.V

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO. 4493 OF 1998 IN M.F.A. 1132 OF 1998

DISPOSED OF VIDE JUDGMENT IN M.F.A.

04.01.2007 SD/- K.T. SANKARAN, JUDGE.

/true copy/

P.A. TO JUDGE

K.T. SANKARAN, J.

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M.F.A. No. 1132 OF 1998

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Dated this the 4th January , 2007

J U D G M E N T

The only point which is raised for consideration in this appeal is whether the Commissioner for Workmen's Compensation was justified in taking Rs.1,500/- as the wages of respondent-workman in respect of injuries sustained on 09.06.1994, before the commencement of the Act 30 of 1995 which came into force on 15.09.1995.

2. The respondent sustained injuries in the accident which occurred on 09.06.1994. He was the driver of an ambulance owned by the first opposite party before the Commissioner. The Commissioner found that the workman was earning wages of Rs. 1,500/- per month and fixed the compensation on that basis. Learned counsel for the appellant submits that the Commissioner was not justified in taking Rs.1,500/- as the criterion for fixing compensation since the amendment to Explanation II to Clause(b) of Section 4 by Act 30 of 1995 came into force only on

15.09.1995. Before the amendment, the explanation reads thus:

> *"Where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the purpose of clause (a) and clause (b) shall be deemed to be one thousand rupees only. "*

3. Similarly clause (b) to Section 4(1) was amended with effect from 15.09.1995 and instead of 50%, it was substituted as 60%. The Commissioner has fixed the compensation on the basis of 60% of the monthly wages whereas before the amendment it could only be 50%. Learned counsel for the appellant relied on the decision of the Supreme Court in **K.S.E.B. vs. Valsala** (**1999 (3) K.L.T. 348 (SC)**), wherein the Supreme Court affirmed the view taken by the High Court in **United India Insurance Co. Ltd. vs. Alavi (1998 (1) K.L.T. 951 (FB))** and held that the relevant date for determination of the rate of compensation is the date of accident and not the date of adjudication of the claim. Therefore the award passed by the Commissioner, to the extent indicate above, is illegal. The amount of compensation payable to the applicant-workman would be Rs.17,252/-.

In the result, M.F.A. is allowed in part and the judgment passed by the Commissioner for Workmen's Compensation is modified to the limited extent that instead of Rs.31,053/-, the applicant is granted a sum of Rs. 17,252/- . In all other respects, the judgment passed by the Commissioner is confirmed.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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M.F.A. No. 1132 OF 1998

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Dated this the 4th January, 2007

J U D G M E N T